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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,214	01/23/2004	Edward A. Zumbiel	RWZ/77	9137
26875	7590	09/20/2006	EXAMINER	
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			DURAND, PAUL R	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 09/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/764,214	Applicant(s) ZUMBIEL ET AL.	
	Examiner Paul Durand	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1/23/2004 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1,2,5-7 and 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams Jr. (US 5,329,747) in view of Chapman et al (US 3,111,221).

In regard to claims 1 and 2, Williams discloses the invention as claimed including producing and erecting and filling a carton 10, with convenience feature in the form of handle 16, over wrapping the filled carton with shrink wrap (no number given), after the carton has been filled, such that substantially the entire film registers with a portion of the carton, and cutting a portion of the film proximate the convenience feature in the form of a cutout, which allows access to the convenience feature (see entire document).

What Williams does not disclose is the use of a scored convenience feature comprised of a scored portion. However, Chapman teaches that it is old and well known in the art of packaging to provide a scored openings 54 in a film 42, which may be scored before or after the film is applied to the grouped items 11-16, held together by spacer 34 for the purpose of allowing access to the convenience features 52 (see Fig.1, C2,L3-67 and C3,L19-22).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Williams with the scoring means as taught by Chapman for the purpose of allowing access to the convenience features.

In regard to claim 5, Williams discloses the invention as claimed including covering the entire carton 10 with the film (see Fig.1).

In regard to claim 6, Williams discloses the invention substantially as claimed except for the remoteness of the packaging location. However, in the previous office action, the examiner has taken the position of Official Notice that it is well known in the art to provide a different location for filling a carton, and another location for wrapping a carton for the purpose of increasing manufacturing throughput. Since applicant has not traversed this position, it is deemed admitted prior art.

In regard to claim 7, Williams discloses the invention as claimed including accessing the convenience feature without removing any items ^{from} ~~for~~ the carton.

In regard to claims 9 and 10, Williams discloses the invention substantially as claimed including a wrapping film 26 fed from a single roll 35. What the modified invention of Williams does not disclose is the wrapping material having different colors of indicia and utilizing multiple rolls of material. However, it would have been an obvious matter of design choice to have provided a wrapping material having different colors of indicia and utilizing multiple rolls of material, since applicant has not disclosed that providing a wrapping material having different colors of indicia and utilizing multiple

rolls of material solves any stated problem or is for any particular purpose and it appears the invention would do.

In regard to claims 11 and 12, Williams as modified by Chapman discloses the invention as claimed including scoring the film after it is on the carton (see C3,L7-20).

3. Claims 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams Jr. and Chapman in view of Killy (US 4,396,143).

The modified invention of Williams discloses the invention substantially as claimed as applied to claim 1, except for the use of a carton with scored convenience features, which also substantially encloses the contents. However, Killy teaches that it is old and well known in the art of packages to provide a case 10, with convenience features in the form of handles 24 and dispenser 50, filling the case with beverages 52, such that each beverage is bounded by the carton for the purpose of enclosing the contents and forming a case and allowing access to it (see Figs. 1,2 and C2,L48 – C3,L420).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Williams with the carton as taught by Killy for the purpose of forming an easy open and accessible package.

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Williams Jr. and Chapman in view of Littmann (US 5,229,180).

The modified invention of Williams discloses the invention substantially as claimed as applied to claim 1, except for the use of a laser to score the package.

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as modified by Chapman

In regard to claims 11 and 12, Williams discloses the invention as claimed including scoring the film after it is on the carton ~~(see C3,L7-20).~~

3. Claims 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams Jr. and Chapman in view of Killy (US 4,396,143).

The modified invention of Williams discloses the invention substantially as claimed as applied to claim 1, except for the use of a carton with scored convenience features, which also substantially encloses the contents. However, Killy teaches that it is old and well known in the art of packages to provide a case 10, with convenience features in the form of handles 24 and dispenser 50, filling the case with beverages 52, such that each beverage is bounded by the carton for the purpose of forming a case and allowing access to it (see Figs. 1,2 and C2,L48 – C3,L420).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Williams with the carton as taught by Killy for the purpose of forming an easy open and accessible package. *of enclosing the contents and*

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Williams Jr. and Chapman in view of Littmann (US 5,229,180).

The modified invention of Williams discloses the invention substantially as claimed as applied to claim 1, except for the use of ^alaser to score the package.

However, Littmann teaches that it is old and well known in the art of packaging to provide a completely covered package with a scored film 10 with laser scoring 18 ~~and~~ ~~metal strip 19 functioning as a die and proximate and aligned with a convenience~~

However, Littmann teaches that it is old and well known in the art of packaging to provide a completely covered package with a scored film 10 with laser scoring 18 with a convenience feature in the form of reclosable tape 20 for the purpose of making a package easier to open (see Figs. 1,2 and C5,L40-47).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Williams with the scoring means as taught by Littmann for the purpose of forming an easy open and accessible package.

5. Claims 13-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams Jr. in view of Chapman and in further view of Littmann.

In regard to claims 13,16 and 21, Williams discloses the invention as claimed including producing and erecting and filling a carton 10, with convenience feature in the form of handle 16, over wrapping the filled carton with shrink wrap, while covering the entire carton 10 with the film (no number given), after the carton has been filled, so that the film is in a conforming relation with a portion of the carton, and cutting a portion of the film proximate the convenience feature, with the cut portion; of the film becoming part of the convenience feature by being located directly adjacent and movable with the convenience feature which allows access to the convenience feature (see entire document).

What Williams does not disclose is the use of a scored convenience feature comprised of a scored portion. However, Chapman teaches that it is old and well known in the art of packaging to provide a scored openings 54 in a film 42, which may

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be scored before or after the film is applied to the grouped items 11-16, held together by spacer 34 for the purpose of allowing access to the convenience features 52 (see Fig.1, C2,L3-67 and C3,L19-22).

Furthermore, Littmann teaches that it is old and well known in the art of packaging to provide a completely covered package with a scored film 10 with laser scoring 18 with a convenience feature in the form of reclosable tape 20 for the purpose of making a package easier to open (see Figs. 1,2 and C5,L40-47).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Williams with the packaging as taught by Chapman and the scoring means as taught by Littmann for the purpose of forming an easy open and accessible package.

In regard to claim 14, Williams discloses the invention substantially as claimed except for the remoteness of the packaging location. However, in the previous office action, the examiner has taken the position of Official Notice that it is well known in the art to provide a different location for filling a carton, and another location for wrapping a carton for the purpose of increasing manufacturing throughput. Since applicant has not traversed this position, it is deemed admitted prior art.

In regard to claim 15, Williams discloses the invention as claimed including accessing the convenience feature without removing any items from the carton.

In regard to claims 17 and 18, the modified invention of Williams discloses the invention substantially as claimed including a wrapping film 26 fed from a single roll 35. What the modified invention of Williams does not disclose is the wrapping material

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having different colors of indicia and utilizing multiple rolls of material. However, it would have been an obvious matter of design choice to have provided a wrapping material having different colors of indicia and utilizing multiple rolls of material, since applicant has not disclosed that providing a wrapping material having different colors of indicia and utilizing multiple rolls of material solves any stated problem or is for any particular purpose and it appears the invention would do.

In regard to claims 19 and 20, Williams as modified by Chapman discloses the invention as claimed including scoring the film after it is on the carton.

Response to Arguments

6. Applicant's amendments to the independent claims have been fully considered and overcome the rejection based on the primary reference of Rhodes. However, the rejection of claims 1-21 based on the primary reference of Williams has been maintained.

Applicant argues that the amendment requiring the carton be over wrapped after it has been filled is anticipated by both Williams and Chapman, as shown in the figures. If applicant is attempting to further the argument that the product of applicants invention is completely over wrapped, the examiner asserts that Williams clearly shows the product completely over wrapped in figure 1.

Applicant also argues that the references do not show the entire film registered with a portion of the package. This argument is not persuasive. Given the broadest reasonable interpretation of this limitation, registration can encompass aligning the

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wrapper in a correct orientation so that the product will be completely wrapped after it has been filled. Alternatively, Chapman on column 3, lines 19-22 discloses aligning (i.e. registering) the holes with the openings of the web 76. The examiner asserts that the entire film is registered with a portion of the container, as the film is a single piece (see figures 1 and 4), and as a portion of the film is aligned, it is inherent that the rest of it must follow and also be aligned.

Applicant has not seasonably traversed the examiners' position of Official Notice of claims 9 and 14. Accordingly, it has been deemed admitted prior art. See MPEP § 2144.03(c).

Therefore for the reasons above, the rejection is deemed proper.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

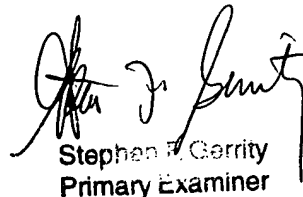
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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 571-272-4459. The examiner can normally be reached on 0730-1800, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Paul Durand
September 15, 2006



Stephen J. Gerrity
Primary Examiner